

Message Text

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ACTION EB-07

INFO OCT-01 EUR-12 EA-07 IO-13 ISO-00 AGRE-00 CEA-01
CIAE-00 COME-00 DODE-00 FRB-03 H-01 INR-07 INT-05
L-03 LAB-04 NSAE-00 NSC-05 PA-01 EPG-02 AID-05
SS-15 STR-04 ITC-01 TRSE-00 USIA-06 PRS-01 SP-02
FEAE-00 OMB-01 AF-10 ARA-06 NEA-10 OIC-02 XMB-02
/137 W

-----251450Z 038510 /47

R 251242Z MAY 77

FM USMISSION GENEVA

TO SECSTATE WASHDC 7642

INFO ALL EC CAPTIALS

AMEMBASSY BERN

AMEMBASSY HELSINKI

AMEMBASSY OSLO

AMEMBASSY OTTAWA

AMEMBASSY STOCKHOLM

AMEMBASSY TOKYO

USMISSION OECD PARIS

LIMITED OFFICIAL USE SECTION 1 OF 2 GENEVA 4083

PASS STR

PASS TREASURY

E.O. 11652: N/A

TAGS: GATT ETRD

SUBJECT: GATT COUNCIL DISCUSSION DISC AND RELATED TAX PRACTICES

REF: STATE 115340

BEGIN SUMMARY. U.S. AGAIN SUCCESSFULLY AVOIDED SEPARATE
GATT COUNCIL ADOPTION OF DISC PANEL REPORT, BUT ONLY THE
NORDIC COUNTRIES SUPPORTED U.S. APPEAL TO ADOPT ALL FOUR
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REPORTS SIMULTANEOUSLY. PRESSURES WILL CONTINUE TO
BUILD UNLESS U.S. BEGINS MOVE TO ELIMINATE DISC. END
SUMMARY.

1. DURING MAY 23 GATT COUNCIL DISCUSSION DISC AND TAX
PRACTICES FRANCE, BELGIUM, NETHERLANDS, EC REMINDED
COUNCIL THAT 75 PERCENT OF ALL U.S. EXPORTS MOVED

THROUGH DISC'S AND THAT, ACCORDING U.S. INTERNATIONAL ECONOMIC REPORT OF THE PRESIDENT, LED TO EIGHT BILLION DOLLAR INCREASE IN U.S. EXPORTS DURING 1976. EC SAID NOBODY IN COUNCIL HAD CHALLENGED DISC PANEL CONCLUSIONS AND DISC REPORT SHOULD THUS BE ADOPTED FORTHWITH.

2. CANADA SAID THEY LOOKING FORWARD TO COUNCIL ACTION ON DISC REPORT AND HOPE U.S. WILL NOW DISMANTLE DISC; PANEL REPORTS ON OTHER THREE COUNTRY PRACTICES REQUIRE FURTHER REFLECTION. NORDICS SAID THEY NOT YET ABLE TO ESTABLISH WHETHER THEIR INTERESTS AFFECTED BY TAX PRACTICES FRANCE, BELGIUM, NETHERLANDS BUT ARE WORRIED ABOUT POSSIBILITY OF PROLIFERATION. SAID RISK OF TRADE DISRUPTION, HOWEVER, WAS QUITE CLEAR IN THE CASE OF DISC. SINCE PANELS SAID ALL FOUR PRACTICES HAVE EFFECTS NOT IN ACCORDANCE WITH ARTICLE XVI:4, ALL FOUR REPORTS SHOULD BE ADOPTED WHEN THE MATTER IS READY FOR TREATMENT. NORDICS SAID THAT AS REPRESENTATIVES OF SMALL COUNTRIES, THEY HAD PARTICULAR STAKE IN UPHOLDING GATT DISPUTE SETTLEMENT MACHINERY. THUS FAR, THIS MACHINERY HAS BEEN ALLOWED TO FUNCTION, BUT THERE IS MUCH TO LOSE IF COUNCIL ALLOWS DISPUTE SETTLEMENT TO DETERIORATE. JAPANS AGAIN SUPPORTED ADOPTION OF DISC REPORT AND SAID THEY FELT THE OTHER THREE COULD BE HANDLED SEPARATELY, ALTHOUGH FURTHER REFLECTION IS REQUIRED ON THE QUESTION OF WHEN ALL REPORTS COULD BE ADOPTED.

3. U.S. REMINDED COUNCIL THAT WE HAD, AT PREVIOUS SESSION, SAID APPROPRIATE NEXT STEP FOR COUNCIL WOULD BE LIMITED OFFICIAL USE

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TO ADOPT ALL FOUR REPORTS. THIS WAS CONSISTENT WITH PAST PRACTICE. WE SAID U.S. WOULD OBJECT VIGOROUSLY TO ADOPTION OF ONLY ONE REPORT FOR WHICH THERE IS NO BASIS. WE NOTED THAT AT PREVIOUS COUNCIL THERE HAD BEEN SOME DISCUSSION OF THE GATT DEFINITION OF "EXPORTS", BUT SINCE THAT TIME U.S. HAD CAREFULLY STUDIED THE STATEMENTS CIRCULATED BY FRANCE, BELGIUM, AND THE NETHERLANDS AND HAD RESEARCHED THE QUESTION ELSEWHERE. UP TO NOW, WE HAVE NOT SEEN ANYTHING TO BEAR OUT THE COMPLAINTS THAT THE PANELS HAD USED AN OVERLY BROAD DEFINITION OF EXPORTS, AND IN FACT WE BELIEVE THERE DOES NOT EXIST A DEFINITIVE GATT JUDGMENT OF THE CONCEPT OF EXPORTS. WE NOTED THAT FRENCH HAD PROMISED TO CIRCULATE AN ADDITIONAL PAPER AND THAT WE AWAITED SAME. WE SAID OUR OWN BRIEFS MADE IT CLEAR THAT WE WERE SPEAKING IN TERMS OF WHAT ALL MEMBERS FEEL ARE "EXPORTS": GOODS PRODUCED IN THE THREE COUNTRIES CONCERNED, TRANSPORTED TO THE BORDERS, AND SHIPPED TO OTHER COUNTRIES.

4. NETHERLANDS EXPRESSED REGRET THAT U.S. COULD NOT RE-
ACT "IN MORE DETAIL" TO THEIR ARGUMENTS PRESENTED AT
PREVIOUS COUNCIL AND SAID BEST WAY TO RESPECT PANELS'
WORK WAS TO STUDY EACH ONE SEPARATELY. NETHERLANDS DIS-
AGREED WITH U.S. VIEW THAT PANELS HAD ACCEPTED OUR AL-
TERNATE CONTENTION THAT IF DISC WERE VIOLATION OF GATT,
SO WERE THE OTHER PRACTICES. NETHERLANDS CALLED ATTENTION
TO PARA 34 OF THEIR PANEL REPORT, WHICH REFERRED TO
"ACTIVITIES BELONGING TO AN ECONOMIC PROCESS" AND SAID
THIS WAS A VERY BROAD CONCEPT WITH WHICH GATT COUNCIL
SHOULD NOT BE BURDENED. SAID THERE WERE OTHER FORA MORE
SPECIALIZED IN INTERNATIONAL TAX MATTERS AND GATT COUNCIL
SHOULD CONFINE ITSELF TO "MORE FAMILIAR AREAS". SAID
NATIONAL TREATMENT PRINCIPLES OF ARTICLE III SHOULD BE
THE RULING CONCEPT. NETHERLANDS ALSO CALLED ATTENTION
TO BISD 7TH SUPPLEMENT, PAGE 64, WHICH INDICATES ART.
III DEALS WITH ONLY GOODS CLEARED THROUGH CUSTOMS.
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NETHERLANDS ASSERTED THAT GATT MAKES A CLEAR DISTINCTION
BETWEEN INTERNATIONAL TRADE AND "INTERNATIONAL COMMERCE"
AND CALLED ATTENTION TO THE FACT THAT NETHERLANDS TAX
PRACTICES ASSIST FLOW OF INVESTMENTS TO LDCS.

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/137 W

-----251450Z 038553 /47

R 251242Z MAY 77

FM USMISSION GENEVA
TO SECSTATE WASHDC 7643
INFO ALL EC CAPTIALS
AMEMBASSY BERN
AMEMBASSY HELSINKI

AMEMBASSY OSLO
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LIMITED OFFICIAL USE SECTION 2 OF 2 GENEVA 4083

PASS STR

PASS TREASURY

5. EC STATED U.S. WAS THE PARTY DAMAGING GATT DIS-
PUTE SETTLEMENT PROCEDURES BY TRYING TO LINK THE FOUR
REPORTS AND BY THE PRACTICE OF COUNTERING ONE CHARGE
WITH ANOTHER; THIS HAS SET A BAD PRECEDENT FOR THE GATT.
FRANCE PROMISED TO PROVIDE A FURTHER MEMORANDUM
AND ASKED RHETORICALLY WHETHER U.S. WOULD HAVE FILED
THE CASE AGAINST FRENCH TAX PRACTICES IF DISC HAD NEVER
EXISTED; CLAIMED THAT TERRITORIALITY PRINCIPLE OF TAX-
ATION WAS "QUASI-UNIVERSAL". SWITZERLAND CLAIMED TO HAVE
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NO SUBSTANTIVE VIEW ON THE MATTERS AT HAND BUT SUPPORTED
EC ASSERTION THAT INCREASINGLY GATT WORKING PARTIES AND
PANELS ARE BEING INVITED TO DEAL WITH AN EXCESSIVE DIVER-
SITY OF MEASURES, THUS MAKING IT MORE AND MORE DIFFICULT
TO REACH CLEAR CONCLUSIONS. SWITZERLAND THEN SUP-
PORTED THE ADOPTION OF THE DISC REPORT. BELGIUM
SIMPLY REMINDED COUNCIL OF THEIR INTERVENTION AT PREVIOUS
SESSION.

6. U.S. SAID ARTICLE XVI:4 REQUIRES COUNTRIES ACCEPTING
THE 1960 DECLARATION TO CEASE OFFENDING PRACTICES AND
THAT A GATT WORKING PARTY LATER CONCLUDED THE REMISSION
OR EXEMPTION OF DIRECT TAXES WAS SUCH A PRACTICE. WE
FURTHER NOTED THAT ALL FOUR PANELS DID INCLUDE IN VIRTUAL
IDENTICAL LANGUAGE THAT ALL FOUR COUNTRIES' PRACTICES
WERE INCONSISTENT WITH XVI:4. WE CONSIDERED MEMBERS OF
PANELS TO HAVE BEEN EXPERT AND OBJECTIVE AND TO HAVE
REACHED THEIR CONCLUSIONS IN GOOD FAITH. WE ADDED THAT
THE CONCLUSIONS OF ALL FOUR PANELS SUPPORT THE U.S. VIEW
THAT IT IS IMPORTANT TO REEXAMINE THE OVERALL INTER-
NATIONAL TAX SITUATION AND APPEALED AGAIN FOR ADOPTION
OF ALL FOUR REPORTS. NETHERLANDS NOTED THAT SECTION 121
OF U.S. TRADE ACT INDICATED UNITED STATES WAS NOT HAPPY
WITH CURRENT RULES ON DIRECT TAXATION.

7. AT CHAIRMAN'S SUGGESTION, COUNCIL AGREED "TO

REVERT TO THESE FOUR MATTERS AT A FUTURE MEETING".

8. COMMENT: IT HAS BECOME CLEAR FROM OUR DISCUSSIONS
WITH OTHER GENEVA DELS THAT PRESSURE FOR SEPARATE ADOP-
TION OF DISC REPORT WILL CONTINUE TO BUILD UNLESS THERE
IS SOON SOME CONCRETE INDICATION OF MOVES BY THE U.S.
ADMINISTRATION TO ELIMINATE THE DISC.SORENSEN

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